TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914. 1915

No. 877

FRANK CROCKER, TRUSTEE IN BANKRUPTCY OF THE POSTAL DEVICE & LOCK COMPANY, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED FEBRUARY 26, 1914.

(24,071)

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

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FRANK CROCKER, TRUSTEE IN BANKRUPTCY OF THE POSTAL DEVICE & LOCK COMPANY, APPELLANT,

vs.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 18, 1915.

1 I. *Petition and Exhibit "A". Filed April* 14, 1906.

In the Court of Claims of the United States.

No. 28966.

FRANK CROCKER, Trustee in Bankruptcy of the Postal Device & Lock Company, Claimant,
vs.
THE UNITED STATES.

Petition.

Filed April 14, 1906.

To the Honorable Chief Justice and Judges of the Court of Claims:

The petition of Frank Crocker respectfully shows:

1. On November 18, 1904, by order of the District Court of the United States for the Southern District of New York, entered, in a certain cause pending therein entitled, "In the matter of Postal Device and Lock Company Bankrupt," the said company was declared and adjudged bankrupt, and the said cause was referred to Macgrane Coxe, Esquire, one of the referees in bankruptcy of the said Court, to take such further proceedings therein as might be required by law and competent to be performed by such referee. Thereafter, on December 6, 1904, the claimant, a citizen of the United States and a resident of the city, county and State of New York, was, by order of the said referee in bankruptcy, duly appointed trustee of the bankrupt estate of the said company, and the claimant brings this suit as such trustee.

2 2. On June 25, 1902, the United States, represented by the Postmaster General, and the said Postal Device & Lock Company, entered into a contract, made and executed in conformity with law, whereby the said company agreed to deliver to a postmaster designated for that purpose by the Postmaster General, letter carriers' and collectors' satchels with shoulder straps for the same of three certain types or classes, designated as Class A, Class B, and Class C, respectively, in such number or numbers, of any or all of the said classes, as might be ordered for the Free Delivery Service of the Post Office Department during the term of four years from July 1, 1902; and the United States agreed to pay the said company for all letter carriers' and collectors' satchels delivered by it under and pursuant to the said contract at the following rates:

For satchels of class A, $2.19 each.
For satchels of class B, $3.16 each.
For satchels of class C, $3.15 each.

A copy of the said contract is hereunto annexed marked Exhibit A, and made part hereof.

3. After the execution of the said contract and the receipt by the said company of orders for certain of the said letter carriers and collectors' satchels, the said company was instructed and ordered by the General Superintendent of the Free Delivery Division of the Post Office Department to deliver such satchels without shoulder straps.

4. Thereafter, from time to time, prior to March 17, 1903, in part performance of the said contract and in fulfillment of orders given by the Postmaster General pursuant thereto, the said company delivered to the United States certain satchels of each of the said classes, the number of satchels of each class so delivered and the price thereof at the contract rate above mentioned, being as follows:

3

Class A,	5032 satchels, at $2.19 each,	$11,020.08
Class B,	5000 satchels, at $3.16 each,	15,800.00
Class C,	55 satchels, at $3.15 each,	173.25
		$26,993.33

No shoulder straps were furnished with these satchels.

The United States accepted and retained the said satchels and from time to time, prior to March 17, 1903, paid the said company for the same, at the rates stipulated in the said contract, without any deduction on account of the omission of shoulder straps. The said payment was made in four instalments, as follows:

October 15, 1902,	$15,800.00
December 20, 1902,	5,481.57
January 15, 1903,	3,337.02
March 17, 1903,	2,374.74
	$26,993.33

5. From time to time, between the date of said contract and April 30, 1903, in further performance of the said contract and in fulfillment of orders of the Postmaster General given pursuant thereto, the said company delivered certain satchels, in addition to those enumerated in the preceding paragraph of this petition; the numbers and prices whereof, at the rates stipulated in the said contract, being as follows:

Class A, 3,835 satchels, at $2.19 each	$8,398.65
Class B, 1,289 satchels, at $3.16 each	4,073.24
Class C, 1,077 satchels, at $3.15 each	3,424.05
	$15,895.94

No shoulder straps were furnished with these satchels.

4 All of the said satchels next hereinbefore enumerated were duly accepted and retained and used by the United States, but the United States has wholly failed and refused to pay for the same at the rates stipulated in the said contract, or otherwise.

6. The claimant concedes, and the said company has heretofore conceded, and so advised the Postoffice Department, that the United States was entitled to a rebate or reduction of the prices stipulated to be paid for satchels of the said several classes for that the company did not deliver shoulder straps for the same, and the claimant is ready and willing that, by the judgment of this court in this cause, the United States shall be credited with the fair and reasonable worth of shoulder straps such as those specified by the contract hereinbefore mentioned, to a number equal to that of all of the satchels delivered by the said company and accepted by the United States as aforesaid, to wit: 16,288. But the claimant is not informed with respect to the fair and reasonable value of such straps and therefore leaves the United States to present and file in this cause such counterclaim, for and on account of the omission of the same as it may be advised.

7. The claimant, as trustee in bankruptcy, as aforesaid, is the owner and the only person interested in the claim above set forth and no assignment or transfer of the same or any part thereof or interest therein has been made. The claimant is justly entitled to receive from the United States the balance due by it to the said company under the said contract, to wit: the sum of $15,895.94. The claimant has made due demand upon the government of the United States for the payment of the said sum, but the same has not been paid nor any part thereof. The claimant has always borne true allegiance to the government of the United States and has not in any way aided, abetted or given encouragement to rebellion against it.

Wherefore the claimant prays for judgment against the United States in the sum of $15,895.94, and the such further relief as it may be entitled to receive, both at law and in equity, in the premises.

FRANK CROCKER,
Trustee in Bankruptcy.

McCAMMON & HAYDEN,
Attorneys for Claimant.

DISTRICT OF COLUMBIA, *ss:*

Frank Crocker, being duly sworn, deposes and says, that he is the claimant named in and who subscribed the foregoing petition, that he has read the same and knows the contents thereof, and that the facts therein stated are true to the best of his knowledge and belief.

FRANK CROCKER.

Subscribed and sworn to before me this 12th day of April, 1906.

[SEAL.] F. A. COLFORD,
Notary Public.

EXHIBIT "A."

This agreement, made this 25th day of June A. D., 1902, by and between the United States of America (acting in this behalf by Henry C. Payne, Postmaster General) of the first part and the Postal Device and Lock Company, a New Jersey corporation, having an office at No. 11 Broadway, New York City, party of the second part.

Witnesseth, That whereas heretofore, to wit: on the third day of May, A. D. 1902, the Postmaster General caused to be published, pursuant to law, in certain papers in the United States, a certain advertisement of the date last aforesaid, of which the annexed printed advertisement is a true copy, viz:

6

POST OFFICE DEPARTMENT,
WASHINGTON, D. C., May 3, 1902.

Proposals for Carriers' Satchels.—Sealed proposals will be received at this Department addressed to the First Assistant Postmaster General, or General Superintendent Free Delivery Service until Friday, June 6, 1902, at noon, for furnishing letter carriers' and collectors' satchels as may be ordered for use in the Free Delivery Service during the contract term of four years, beginning on the 1st day of July, 1902. Specifications will be furnished on application by letter to the First Assistant Postmaster General, or General Superintendent Free Delivery System.

H. C. PAYNE,
Postmaster General.

And, Whereas, The specifications for the said articles mentioned in said advertisement were set forth in the printed "Descriptive Specifications for Letter Carriers' Satchels and Collectors' Satchels," hereto annexed, marked "A," and made a part of this agreement.

And, Whereas, Certain proposals were made pursuant thereto and received at the Post Office Department offering to furnish said Department such quantities, and at such times and from time to time as the same may be ordered, for a period of four years beginning July 1, 1902, and ending June 30, 1906, Letter Carriers' and Collectors' Satchels, and the said proposals having been opened and considered, the said party of the second part was found to be the most advantageous bidder for the Department, and their bids were accepted by the Postmaster General for Two Dollars and Nineteen Cents ($2.19) for each Carrier's Satchel, Class "A;" Three Dollars and Sixteen Cents ($3.16) for each Letter Carrier's Satchel, Class "B;" and Three Dollars and Fifteen Cents ($3.15) for each Collector's Satchel, Class "C;" all to be made of Pegamoid or Fabrikoid leathers, "Washington Brand," according to proposal of party of the second part, so furnished as hereafter set forth.

7 Now, therefore, in consideration of the premises and the mutual and respective covenants and agreements between

the parties hereto, it is hereby covenanted and agreed between the parties hereto:

First. That the said party of the second part shall, on their part furnish and deliver, at and for the prices hereinafter agreed to be paid therefor, in such quantities, and at a time and from time to time as they may be ordered, for the Free Delivery Service, the following specified articles mentioned in said advertisement, to wit: Letter Carriers' Satchels and Collectors' Satchels, conforming in all respects as to dimensions, construction and workmanship, strictly, to the said "Descriptive Specifications for Letter Carriers' Satchels and Collectors' Satchels" hereto attached marked "Exhibit A," and hereby made a part of this contract. Said Letter Carriers' and Collectors' Satchels to be made of Fabrikoid or Pegamoid leather, "Washington Brand," equal in every particular to the samples submitted with their proposal by the said party of the second part. The same to be furnished and delivered for the use, as aforesaid, of the First Assistant Postmaster General; and ordered by the Postmaster General, and to be in all respects in accordance with the specifications aforesaid the said satchels to be securely put up and plainly addressed to the Postmaster, to whom the orders from the Department, made from time to time, may direct them to be sent; the same to be subject to inspection before delivery as the Postmaster General, or, acting for him, the First Assistant Postmaster General, may direct.

Second. The party of the first part hereby agrees to pay to the said party of the second part at the rate of Two Dollars and Nineteen Cents ($2.19) for each Carrier's Satchel, Class "A;" Three Dollars and Sixteen Cents ($3.16) for each Letter Carrier's Satchel, Class "B;" and Three Dollars and Fifteen Cents for each Collector's
8 Satchel, Class "C," all to be made of Pegamoid or Fabrikoid leather, as above stated, which may have been delivered and found upon examination to conform to the requirements of this contract, and after proper examination and adjustment of accounts payments to be made as aforesaid upon the complete and satisfactory delivery of each lot or quantity ordered.

The party of the second part stipulates and agrees that, in case of failure on their part to do and perform all or any of the covenants, agreements and stipulations of this contract, on their part to be performed as herein set forth, the said party of the second part shall become indebted to and pay to the United States of America the sum of Fifteen Thousand Dollars ($15,000), for which said sum the said party of the second part shall be liable to be sued in the name of the United States of America in any court having jurisdiction thereof.

And it is further expressly agreed that in case of failure of said party of the second part to furnish any of said satchels within a reasonable time after they have been ordered (the reasonableness of which time shall be determined by the Postmaster General, the right is reserved by the Postmaster General, if in his judgment, the exigencies of the service shall require to purchase such satchels in open market; and if a greater price than that specified in this con-

tract be paid for such satchels, the difference in the total amount of the purchase may be charged to said party of the second part.

It is further agreed that satchels delivered under this contract shall be inspected within a reasonable time before delivery as directed by the Post Office Department, and if they, or any of them, are, in the opinion of the Postmaster General, not in accordance with the requirements of this contract, the Postmaster General may, and the right is reserved to him, to reject any or all of such goods; but in
9 the event that the exigencies of the public service shall require the acceptance of any such satchels, which, in the opinion of the Postmaster General, or his duly authorized agent, are inferior in any respects to the requirements of this contract, the Postmaster General may, and the right is hereby reserved to him, to absolutely fix the price thereof, and to pay for any inferior satchels so accepted, any compensation less than the price fixed by the contract that may seem to him just and reasonable under all the circumstances, which shall be a complete discharge of all liability on the part of the government for such satchels.

The said parties of the first part and second part hereby mutually stipulate and agree that this contract may be annulled by the Postmaster General for any failure, in his opinion, of the said party of the second part to do and perform any of the covenants, agreements or stipulations herein covenanted, agreed and stipulated to be done or performed by the said party of the second part, or in case of a wilful attempt by them to impose upon the Department, satchels inferior to those required by this contract, and the said party of the second part further expressly agrees that neither the termination of said contract as aforesaid, nor anything done by the Postmaster General in pursuance of this stipulation shall affect or impair any right or claim of the United States to indebtedness or damage for the breach of any of the covenants of this contract by the party of the second part.

And it is further stipulated and agreed that no member of or delegate to the Congress of the United States shall be admitted to any share or part of this contract, or to any benefit to arise therefrom (as provided by Section 3741 of the Revised Statutes of the United States); and that this contract can not be lawfully transferred or assigned (as provided by Section 3737 of said Revised Statutes).

The party of the second part further stipulates and agrees, that if at any time during the continuance of this contract the
10 surety company upon the bond given to secure the same shall become insolvent, the Postmaster General shall have the right to require additional and sufficient surety, which the said party of the second part shall thereupon furnish to the acceptance of the Postmaster General within ten days after notice to do so; and in default thereof this contract may be annulled at the option of the Postmaster General.

And for the faithful performance of this contract and each and every one of its covenants, agreements and stipulations therein on their part to be performed, the said party of the second part bind themselves, their heirs, executors and administrators.

In Witness Whereof, the said Postmaster General has caused the seal of the Post Office Department to be hereto affixed, and has attested the same by his signature.

And the said Postal Device and Lock Company, Principal, as party of the second part to the said contract, have hereunto set their hand and seal by their President on the day and year first herein written.

H. C. PAYNE,
Postmaster General.

POSTAL DEVICE & LOCK COMPANY,
WADE CHANCE, *President.*

Signed, sealed and delivered by the Postmaster General in the presence of
A. W. M.
R. J. W.

And by the party hereto of the second part in the presence of
SPENCER TRASK.
LOUIS A. GAERTNER.

F. C. H.

Approved as to form.
G. H. CHRISTIANCY,
Acting Asst. Att'y Gen'l for P. O. Dept.

11 11. *Travers. Filed November* 13, 1913.

In the Court of Claims of the United States, December Term, A. D. 1913.

No. 28966.

FRANK CROCKER, Trustee, &c.,
vs.
THE UNITED STATES.

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimant therein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

HUSTON THOMPSON,
Assistant Attorney General.

12 III. *Argument and Submission of Case.*

On November 13, 1913, this case came on to be heard. Mr. James H. Hayden was heard for the claimant; Mr. Louis G. Bissell was heard in opposition and the case was submitted.

13 IV. *Findings of Fact and Conclusion of Law. Filed December 1, 1913.*

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

IV. *Findings of Fact.*

I.

On November 18, 1904, by order of the District Court of the United States for the Southern District of New York, entered in a cause pending therein entitled: "In the Matter of the Postal Device & Lock Co., Bankrupt," the said company was declared and adjudged a bankrupt, and the said cause was referred to Macgrane Coxe, Esq., one of the referees in bankruptcy of the said court, to take such further proceedings therein as might be required by law and competent to be performed by such referee. Thereafter, on December 6, 1904, the said referee appointed the claimant, Frank Crocker, trustee in bankruptcy of the said Postal Device and Lock Co.

II.

On May 3, 1902, the Postmaster General published an advertisement for proposals to furnish letter carriers' and collectors' satchels for a period of four years from July 1, 1902, all bids to be received on or before June 6, 1902. Accompanying this public advertisement were detailed specifications of the satchels to be furnished, and among said specifications were three requiring satchels of A and C grade to be furnished with straps and B grade without straps.

III.

On or about June 5, 1902, the Postal Device and Lock Co. submitted its proposals for the manufacture and delivery of said satchels according to said specifications, stating as a price therefor $2.19 for Class A satchels, $3.15 for Class B satchels, and $3.15 for Class C satchels. On or about June 17, 1902, a committee of three persons therefore appointed by the Postmaster General to receive
14 and examine all bids submitted under said proposals reported to the Postmaster General recommending the letting of said contract to the Postal Device and Lock Co., and on June 25, 1902, the said Postmaster General did let said contract to the Postal Device and Lock Co., the same being appended to and made a part of the petition herein.

IV.

From time to time, after the execution of the said contract, and prior to March 17, 1903, the said Postal Device and Lock Co., in the performance of the said contract on its part, did furnish and deliver to the Post Office Department certain of the said satchels, except that

satchels of Classes A and C were furnished without shoulder straps. The Post Office Department accepted and retained the satchels so delivered. Shoulder straps for them were purchased by the Post Office Department from a third party at a cost of 39½ cents each, at or before the time when the satchels were delivered. The following list represents the number of satchels delivered and accepted, as aforesaid, together with the contract rates for satchels of the several classes and the price of all satchels of each class so delivered:

Class A, 5,032 satchels, at $2.19 each	$11,020.08
Class B, 5,000 satchels, at $3.16 each	15,800.00
Class C, 55 satchels, at $3.15 each	173.25
Total (10,087 satchels)	26,993.33

From time to time, on or before March 17, 1903, the United States paid to the said company, for and on account of the said satchels, delivered as aforesaid, the following sums:

Oct. 15, 1902	$15,800.00
Dec. 20, 1902	5,481.57
Jan. 15, 1903	3,337.02
March 17, 1903	2,374.74
	26,993.33

V.

From time to time betwen the date of the said contract and April 30, 1903, the said Postal Device and Lock Co. did furnish and deliver to the Post Office Department certain satchels, in addition to those enumerated in Finding IV, except that satchels of Classes A and C were furnished without shoulder straps. The Post Office Department accepted and retained the satchels so delivered. Shoulder straps for them were purchased by the Post Office Department from a third party at a cost of 39½ cents each, at or before the time when the satchels were delivered. The following list represents the number of satchels of each class delivered and accepted as aforesaid, in addition to those delivered and paid for as stated in Finding IV, together with the contract rates for satchels of the several classes and the price of all satchels of each class so delivered:

Class A, 3,835 satchels, $2.19 each	$8,598.65
Class B, 1,289 satchels, $3.16 each	4,073.24
Class C, 1,077 satchels, $3.15 each	3,424.05
Total (6,201 satchels)	15,895.94

These satchels were accepted and retained by the United States, but the United States has failed and refused to pay for the same.

15

VI.

Of the satchels furnished by the Postal Device and Lock Co., as stated in Findings IV and V, there were satchels of Classes A and C as follows:

Class A..... 8,867
Class C..... 1,132

or a total of 9,999 satchels which should have been furnished with straps, for which the Government paid 39½ cents each but which were not furnished as per terms of claimant's contract, amounting in all to $3,949.61.

VII.

Some time prior to June 3, 1902, and before the contract was awarded or made, A. W. Machen, then superintendent of the Free Delivery Division of the Post Office Department, conceived a scheme to share in the profits that might arise from the manufacture and sale to the department of the satchels mentioned in claimant's contract. In connection with George E. Lorenz, then a citizen of Toledo, Ohio, and W. G. Crawford, vice president of plaintiff company, it was arranged that said Crawford was to induce said claimant company to enter into an independent agreement with Lorenz by the terms of which Lorenz was to prepare the bid to be made by said company and, if the contract was awarded it, that he, in conjunction with Crawford, was to contract as agents for and in name of said company for the manufacture of said satchels, attend to all details of same, and Lorenz was to receive as compensation therefor all profits arising therefrom in excess of 25 cents on each satchel, as set forth in Finding XII. Said contract was duly prepared by said Crawford and submitted to said claimant company and duly executed by it on the 3d day of June, 1902, without any actual knowledge upon its part of the secret understanding between Machen, Lorenz, and Crawford, and during the course of the execution of claimant company's contract with the Government claimant company made payment in full to Lorenz according to the terms of their contract with him.

VIII.

On some date in August, 1902, before any satchels were furnished the defendants, claimant company modified, by a new contract, their contract with Lorenz of June 3, 1902, set forth in Finding XII, under the terms of which the said Lorenz was to furnish the straps that by the specifications of their contract with the Government should accompany satchels of Classes A and C, and this contract further provided that the claimant company was to receive and retain $1.74 for Class A, $1.97 for Class B, and $2.31 for Class C satchels. Said contract was duly executed by the claimant company in so far as it was concerned, and out of the sums of money paid by the Government to said claimant company it paid over to said Lorenz his compensation as was provided in his contract with the claimant.

16 IX.

The claimant company did not manufacture satchels nor the material that went into the same, and in order to execute its contract with the Government it made a contract with William H. Wiley &

Son Co., of Hartford, Conn., through its agent, Crawford, to furnish the material and manufacture the satchels called for under its contract. On June 30, 1902, the Wiley Co. notified the claimant company that it would be impossible for them to furnish the straps provided for in the specifications of claimant's contract because the buckle on said straps was a patented article and the patentee declined to sell said buckle separate from the straps and in no event would sell direct to a contractor. On or about this time Crawford, vice president of the claimant company, in a conversation with Machen at the Post Office Department, inquired if there were any orders for satchels. Machen replied by saying that the department wanted 5,000 satchels in a hurry and that they must be furnished with Lamb straps. Crawford replied by saying that he would get the straps if they did not cost any more money and if they could get them, to which Machen said that it did not make any difference about the cost of the straps; that the Government would get them, ship the straps to the claimant company's manufacturer, pay for the same, and adjust any difference later on in the year's orders. To this Crawford assented. Said Machen did order said straps as aforesaid and paid therefor out of Government funds the sum of 39½ cents each.

X.

The said George E. Lorenz never furnished any of said straps, nor did he do anything else in any way, shape, or manner toward discharging his obligations under his agreement with claimant company. The Government, through Machen, made all the payments heretofore mentioned to the claimant as provided by the terms of its contract, without any deduction for straps, and both he and Lorenz knowing at the time said payments were made that the Government had furnished and paid for said straps. The claimant company received all such payments, receipted for them in full, and paid over to said Lorenz all sums of money it had agreed to pay him for said straps, which said Lorenz subsequently divided with said Machen and Crawford. The claimant company had no actual knowledge at any time that Lorenz was not furnishing said straps and never knew until after its contract had been annulled that the Government had furnished and paid for said straps.

XI.

The said George E. Lorenz also divided with said Machen and Crawford all sums of money which he received from said claimant company either as payment for straps or his portion of the profits made by said company with said Machen and Crawford in pursuance of an understanding existing between them. These payments were also made without any actual knowledge upon the part of the claimant that the same was being done. No objection or deduction was ever made to or from claimant's contract with the Gov-
17 ernment, and no actual knowledge ever existed upon its part as to any of the transactions between Machen, Crawford, and Lorenz as to any division of any sum or sums of money received by

any of them from the profits of said contract. The claimant company preferred its claim for satchels not paid for by the Government soon after its contract was annulled. Said claim was refused payment by the Post Office Department on the ground of fraud, and this suit was thereafter commenced, its contract with the Government, as heretofore mentioned, being annulled by the Postmaster General in August, 1903.

Lorenz, Machen, and Crawford, in their agreement for division of funds received from the contractor, allotted one-fourth to Crawford, one-fourth to Lorenz, and one-half to Machen; and Machen and Lorenz also had a secret understanding with each other, unknown to even Crawford, by which their three-fourths was to be divided equally between them.

XII.

The contract between George E. Lorenz and the Postal Device & Lock Co. is as follows:

"This agreement entered into this 3rd day of June, A. D. 1902, by and between the Postal Device and Lock Company, a corporation organized under and by virtue of the laws of the State of New Jersey, and having one of its offices at #11 Broadway (Borough of Manhattan), in the city and State of New York, party of the first part, and George E. Lorenz, of Toledo, county of Lucas, and State of Ohio, party of the second part, witnesseth:

"The party of the first part has agreed and does hereby agree to employ the party of the second part, as hereinafter provided, the compensation of said party of the second part for services rendered under and by virtue of this agreement, from and after the date of its execution up to and including the 30th day of June, 1902, to be one (1) dollar, the receipt of which is hereby acknowledged. If and in the event that the object of this employment, as hereinafter stated at length, to wit, the award to said party of the first part of a certain contract for the manufacture of letter carriers' mail bags or satchels, is attained, then the said party of the second part shall be further compensated for his services rendered under this agreement and contract as hereinafter provided.

"The said party of the second part agrees to give to the said party of the first part all of his best effort and services toward securing the award to the said party of the first part of a certain contract with the Post Office Department of the United States Government for the manufacture of letter carriers' mail bags or satchels, the advertisements for bids for said contract being hereto attached and marked 'Ex. A.'

"The parties hereto, said party of the first part acting by and through its vice president, William G. Crawford, of Washington, D. C., shall jointly determine on bids to be made to said Post Office Department of the United States Government with a view to securing the award to the said party of the first part of said contract for the manufacture of said letter carriers' mail bags or satchels, and if said

contract is awarded to said party of the first part, the said
18 party of the second part and said Crawford, acting for the said party of the first part, shall jointly enter into agreements and contracts with manufacturers for the manufacture of said letter carriers' mail bags or satchels and for the materials necessarily required in the manufacture of said bags or satchels; provided that the bid or bids submitted for the purpose of securing the award of said contract for the manufacture of said letter carriers' mail bags or satchels shall be presented or submitted to the post-office authorities in the name of said party of the first part and all contracts made with any manufacturers or other persons for the manufacture of said letter carriers' mail bags or satchels shall be entered into in the name of said party of the first part.

"The said party of the second part agrees that he will not make any bid or bids on or pertaining to the said contract for the manufacture of said letter carriers' mail bags or satchels other than the bid or bids mutually agreed to by the parties hereto, as hereinbefore provided, which said bid or bids shall be presented or submitted in the name of said party of the first part; and the said party of the second part further agrees that he will not participate save as herein provided in any bid or bids having for its or their object the securing of said contract for the manufacture of said letter carriers' mail bags or satchels, either directly or indirectly; and the said party of the second part also agrees not to furnish any figures to or aid or assist any person or persons, other than the said party of the first part, either directly or indirectly, to secure the award of said contract for the manufacture of said letter carrier's mail bags or satchels.

"If and in the event that said contract is awarded by the post-office authorities of the United States Government to said party of the first part under and by virtue of bid or bids mutually agreed to and presented by the parties to this agreement, then the parties hereto shall be entitled to the net profits of or arising from the said contract in the shares following, to wit: The party of the first part shall be entitled to a profit of twenty-five (25) cents on each and every said letter carriers' bag or satchel furnished to the said Post Office Department of the United States Government under said contract, and said profit of twenty-five (25) cents on each and every said bag or satchel shall become the sole property of the said party of the first part, while all the remainder of said profit shall become the sole property of said party of the second part, said excesses or surplus of said net profit over and above said twenty-five (25) cents on each said mail bag or satchel furnished the said Post Office Department of the United States Government being full compensation to the said party of the second part for all services rendered or to be rendered by him in the premises up to and including the date when said contract with the United States Government is terminated. If and in the event that the said net profit on said bags or satchels does not amount to more than twenty-five (25) cents on each and every of said bags or satchels furnished to the said Post Office Department of the United States Government, then the entire net profit growing out of said contract for the manu-

facture of said letter carriers' mail bags or satchels shall become the sole property of said party of the first part, it being understood and agreed that the term "net profit," where used in this agreement shall mean the difference between the cost of manufacture and delivery (including necessary materials of said letter carriers' mail bags
19 or satchels); and the terms of the said contract with the Post Office Department of the United States Government, and that office expenses of said party of the first part, salaries of its officers, etc., shall not be included in calculating the said net profit arising out of said contract for the manufacture of said letter carriers' mail bags or satchels.

"In testimony thereof we have hereunto set our hands and affixed our respective seals, each in the presence of two subscribing witnesses.

"POSTAL DEVICE & LOCK CO.,
"By WADE CHANCE, *Pres't.*
"GEO. E. LORENZ." [SEAL.]

* * * * * * *

Copy of memorandum agreement between the said parties is as follows:

"This memorandum of agreement, entered into this —— 1902, by and between the Postal Device and Lock Company, organized under and by virtue of the laws of the State of New Jersey, and having one of the offices at #11 Broadway (Borough of Manhattan), in the city and State of New York, party of the first part, and George E. Lorenz, of Toledo, county of Lucas, and State of Ohio, party of the second part, witnesseth:

"Whereas the parties hereto did on the 3rd day of June, A. D. 1902, enter into a certain agreement having for its object the securing of a contract with the United States post-office authorities for the manufacture of letter-carriers' mail bags or satchels for the four years next succeeding the 1st day of July, 1902, and

"Whereas the bid or proposal to furnish said letter-carriers' mail bags or satchels under and by the terms of said agreement between the parties hereto, dated the 3rd day of June, 1902, was to be and was presented in the name of the Postal Device and Lock Company, party of the first part, and

"Whereas said bid or proposal for furnishing said letter-carriers' mail bags or satchels for said period of four years next succeeding July 1st, 1902, was accepted by the Post Office Department, acting through the Postmaster General, and a contract by and between the said department and the said Postal Device and Lock Company, party of the first part herein, was duly entered into and executed by the said parties thereto, the Post Office Department being represented by said Postmaster General and the Postal Device and Lock Company by its president, said contract being dated on the 25th day of June, 1902.

"Now, therefore, in consideration of the premises and of the mutual covenants and agreements of the parties aforesaid, it is hereby

covenanted and agreed between the parties of the first and second parts as follows:

"First, That the Postal Device and Lock Company, of the first part, shall and is to have the exclusive right, under said contract of June 25th, 1902, with the postal authorities, hereinbefore referred to, to place contracts for the manufacture of the body portions of said letter-carriers' mail bags or satchels, styled 'A,' 'B,' and 'C,' in said contract of June 25th, 1902, it being understood and agreed that the term 'body portions' shall be construed to mean the bags or satchels excluding the shoulder straps required under the said contract of June 25th, 1902, with the Post Office Department.

"Second, That the said Postal Device and Lock Company, of the first part, shall retain out of the contract price, stated in the said contract with the United States Government, the sum of one dollar and seventy-four cents for each 'A' bag or satchel, the sum of one dollar and ninety-seven cents for each 'B' bag or satchel, and the sum of two dollars and thirty-one cents for each 'C' bag or satchel manufactured and furnished to the United States Government, f. o. b. Hartford, Connecticut, or other place of manufacture, by the said Postal Device and Lock Company; the said Postal Device and Lock Company to pay from the retained sums herein referred to the cost of all material necessarily used in the manufacture of the said 'body portions' and also the cost of manufacturing the 'body portions' of the above referred-to satchels, so long as said satchels are manufactured of the same quality or grade of Pegamoid or Fabrikoid leather as that of which the sample bags are made which were furnished to the United States Government; any saving effected or balance remaining after delivery of the said satchels 'A,' 'B,' and 'C' at the prices herein agreed upon to be retained out of the contract price with the United States Government, above referred to, to be the exclusive property of the Postal Device and Lock Company.

"The parties to this agreement further agree that should the said United States Government require during the four years next succeeding the 1st day of July, 1902, that the said 'body portion' of said satchels being made of other material than Pegamoid or Fabrikoid leather, or of a different grade of Pegamoid or Fabrikoid leather than that of which the sample bags furnished to the United States Government are made, that a sufficient sum be retained by the said Postal Device and Lock Company to enable it to manufacture the said satchels of whatever material may be designated or required and in addition to net the Postal Device and Lock Company a profit of twenty-five (25) cents on each of said satchels so manufactured and furnished to the United States Government.

"Third, That the said George E. Lorenz, party of the second part, shall and is to have the exclusive right to furnish or cause to be furnished to the said Postal Device and Lock Company from time to time and in such quantities at a time as may be required under said contract of June 25th, 1902, with the postal authorities hereinbefore referred to, all shoulder straps used or required to be used under and by virtue of the said contract of June 25th, 1902 and the said George E. Lorenz, party of the second part, binds himself to furnish and

deliver at Hartford, Connecticut, or at any other place designated by the party of the first part, or by the United States Government, shoulder straps, as required, satisfactory to the United States Government and agrees to be held accountable in every particular for the property delivery of the said shoulder straps as required.

"Fourth, That the said Postal Device and Lock Company, party of the first part, shall pay over to the said George E. Lorenz, party of the second part, the sum of forty-five (45) cents for each 'A' bag or satchel, the sum of one dollar and nineteen cents for each 'B' bag or satchel, and the sum of eighty-four cents for each 'C' bag or satchel so long as the 'body portion' of said 'A,' 'B,' and 'C' bags or satchels are manufactured of Pegamoid or Fabrikoid leather, and for
21 which bag shoulder straps have been furnished by the party of the second part, and which satchels have been manufactured and furnished by the said Postal Device and Lock Company to the United States Government under said agreement or contract of June 25th, 1902, hereinbefore referred to; the said sums to be the exclusive property of the said George E. Lorenz, party of the second part; and which sums are accepted by him in full settlement of all claims against the said Postal Device and Lock Company, party of the first part, and the United States Government, and for any interest the said George E. Lorenz may have in the said contract of the Postal Device and Lock Company with the United States Government, bearing date of June 25th, 1902; any saving effected or balance remaining after delivery of the said shoulder straps by the said George E. Lorenz to be the sole property of the said George E. Lorenz, party of the second part, it being understood that the said George E. Lorenz, party of the second part, is to be paid the said amounts on each shoulder strap or satchel delivered to the United States Government immediately after warrant in payment for said bags or satchels shall have been drawn, issued, delivered, and paid to the said Postal Device and Lock Company, of the first part, by the Post Office Department of the United States Government, after deducting the necessary traveling expenses incurred by the Postal Device and Lock Company in connection with the manufacture of the said satchels 'A,' 'B,' and 'C.' It being understood between the parties that the said George E. Lorenz is to receive payments as herein provided on the same number of shoulder straps as there are bags manufactured and delivered by the Postal Device and Lock Company to the United States Government. The payments for bags and shoulder straps by the United States Government to be evidence of satisfactory delivery by the said George E. Lorenz, party of the second part.

"Fifth, The agreement by and between the parties hereto, dated the 3rd day of June, A. D. 1902, is hereby revoked in so far as it conflicts with the provisions of this agreement.

"In witness whereof the said parties hereto have hereunto set their hands and affixed their seal on the date first above writtn.

"POSTAL DEVICE & LOCK CO.,
"WADE CHANCE, *Pres't.*
"GEORGE E. LORENZ."

* * * * * * *

Conclusion of Law.

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the claimant is entitled to judgment against the United States in the sum of one hundred and twenty-three dollars and sixty-three cents ($123.63).

V. *Opinion.*

BOOTH, J., delivered the opinion of the court:

This suit concerns a contract with the Post Office Department. The defendants interpose a plea of fraud. The contract in question obligated the plaintiff company to furnish and deliver letter carriers' and collectors' satchels to the department for a period of four years from July 1, 1902. It was made in response to an advertise-
22 ment for proposals so to do issued during the preceding month of May. A committee of three disinterested and reputable gentlemen duly commissioned recommend the award to plaintiff company, and no fraud is charged; most certainly none is proven in the inception of the contractual relations between the plaintiff company and the defendants. The infamous transactions as alleged which subsequently occurred were conceived by three men, one the vice president of the plaintiff company, one a private citizen, and the other a then trusted employe of the Post Office Department. All of these men were subsequently indicted, and the vice president of the plaintiff company alone escaped judicial condemnation. The alleged scheme for defrauding the Government which was consummated imposed upon the vice president of the plaintiff company the duty of inducing his corporation to enter into an independent contract with one Lorenz, he to prepare and submit the bid of the company, and, if successful in securing the ward, then in conjunction with the vice president as a representative of the plaintiff company, they were to negotiate the necessary contracts for the material for and the manufacture of said satchels and such contracts were to be made in the company's name. The plaintiff company did not and never had manufactured satchels or dealt in the materials necessary so to do. The plaintiff company made in good faith the proposed agreement with Lorenz, by which he was to have all profit in the transaction in excess of 25 cents on each satchel, and faithfully executed the same until its terms were modified by a subsequent one. The plaintiff executed its contract with the Government, furnished without complaint to it all the satchels ordered by the department until the same was annulled in August 1903, because of the fraudulent conduct of its vice president. The conspiracy to defraud the Government consisted of an oral agreement between Lorenz, the vice president of the company, one Crawford, and a Mr. Machen, then superintendent of the Free Delivery department of the Post Office Department. These three men, prior to the letting of the contract, agreed among themselves

that in the event of the claimant securing the same, that Lorenz would divide among them all the sums of money he was to receive from the plaintiff company under his agreement with it. Lorenz and Crawford were to have one-fourth each and Machen the remaining one-half, and this agreement was observed at least to the extent of Lorenz and Machen, for they have so admitted.

The satchels to be furnished under the contract were classified into three grades "A," "B," and "C." The "A" and "C" grades were to be provided with straps. Herein appears criminal vice. It was found impossible to secure the straps desired. The claimant company had previous to this modified its first contract with Lorenz by which it was to retain a larger share of profit than 25 cents on each satchel, and Lorenz agreed to furnish the necessary straps. Machen thereupon orders from one Lamb, a New York manufacturer, the necessary straps, they being a patented article and alone obtainable from him, and has the Government pay for them, duplicating this payment to plaintiff by paying it the full contract price as though it had furnished straps. It is not pretended that the plaintiff had actual knowledge of this or any other criminal transaction between its agent Lorenz and Machen. The plaintiff was wholly ignorant of Machen's or Lorenz's peculations as to straps, and honestly supposed it was
23 discharging its contractual obligations in full. Payments were repeatedly made to the company, without complaint or deduction, and they in turn made repeated payments for straps to Lorenz, who at least divided with Machen. No part of the money paid for straps was retained by the plaintiff. This continued until the annulment of the contract, at which time the defendants had received satchels for which they have never paid. This suit is upon the contract to recover the contract price for the same, less the full amount paid by the defendants for straps.

We have set forth somewhat in extenso the facts of the case. The defendants relying upon a plea of fraud, which always challenges the close attention of the court, and as in this case it is more or less a question of fact, we deem it wise to do so.

In order to involve the plaintiff in the admitted wrongdoing of others connected with it in the execution of the contract it must appear that they knew, either actually or constructively, of what was to be done and what was done. It is quite too apparent and requires only assertion to say that if the plaintiff company in anywise participated in the machinations of its agents in their conspiracy with an officer of the Government to share to any extent in the profits of the company, it is now estopped to assert any claim for compensation under its contract.

The findings disclose the absolute want of any actual knowledge, participation with, interest in, or direction to any of its agents to do anything unlawful. If such knowledge is to be imputed the imputation must arise from inferences gleaned from the positive testimony in the record, or be chargeable to it by law.

The conspiracy to defraud the Government punishable under section 5440, Revised Statutes, while doubtless concocted previous

to the letting of the contract, was peculiar in the respect that it did not contemplate deceit in the quality or price of the supplies to be furnished. No claim is made that the letting or terms of the contract as awarded were at all tainted. It was wholly a conception to lay illegal hands upon a portion of the legitimate profits of the contractor, and share the same with a Government officer charged with the administration of the contract. It is of course obvious that the administration of the contract under the supervision and control of a corrupt fiduciary of the Government was fraught with great possibilities as to graft; nevertheless, there is nothing in all these circumstances standing alone to exclude the idea of innocence upon the part of the contractor. Weighing against these circumstances, even if they were sufficient to indulge a suspicion of guilt, are the correlative transactions of the plaintiff company as distinct from the conduct of its agents. The record presents uncontradicted proof that no portion of the tainted money ever reached its exchequer; that it faithfully discharged its monetary obligations under its contract with Lorenz, and at no time retained, nor does it now possess, a single penny above is legitimate profits under the contract. Motive for the commission of crime is always a pertinent inquiry. Fraud is not usually practiced as a pastime; the participants contemplate an unjust accumulation and conceive methods to bring it about. The plaintiff not only does not profit by anything done by its agents, but, on the other hand, must be penalized to the extent of the payments corruptly made by Machen for the satchel straps, this
24 money it paid to Lorenz under an honest mistake that he was complying with his agreement with it to furnish the straps.

Defendants insist that the terms of the agreements between Lorenz and the plaintiff are in themselves so unusual as to excite suspicion. The insistence would be forcible indeed if the plaintiff had been and was then engaged in the manufacture of satchels and was fully informed upon every detail of the same. The business was, however, entirely new to it, outside its usual occupation, and there is nothing to be implied from its engagement of Lorenz. Many contracts have been made by the Government with contractors not at the time engaged in the manufacture of the supply contracted to be furnished. The Government was alone concerned in getting the supply in accord with its specifications at the lowest responsible price. The contractor entered into bond to fulfill his contract, and it would certainly be a somewhat violent presumption to attach guilt to a contractor because he may have been overreached by a subcontractor. It is a matter of little difficulty to view a (past) transaction which ultimately resulted in fraud, and after being in possession of all the details of the criminal offense, wonder why each one of the deceiving movements did not arouse our suspicion. The plaintiff had confidence in Crawford; he was its trusted agent, clothed with authority to solicit and contract for business; Lorenz was his discovery, and it was no more remarkable transaction for the plaintiff to adopt his suggestions and ratify his contract than it would be for any other corporation to do so. It is done repeat-

edly every day. It is certainly not to be presumed that the company retained in its employ an agent in whom it distrusted. The truth about the whole matter is that the company was the victim and suffered equally with the defendants.

This court in Garman v. United States (34 C. Cls., 237) awarded judgment to an innocent subcontractor despite the positive proof that the original contractor had been guilty of attempted bribery of a Government official in securing the contract. The court in so doing used this language: "He performed the service, apparently, in good faith, and was not chargeable with notice of the corrupt and fraudulent practices which had secured it."

United States v. State Bank (96 U. S., 30) is one of a series of cases involving the fraud of agents, wherein Government and private funds were embezzled by agents of the parties. The cases are quite too familiar to review. The language of the opinion seems apropos: "The agent was agent for no such purpose. His doings were vitiated by the underlying dishonesty, and could confer no rights upon his principal."

Cyclopedia of Law and Procedure (vol. 10, p. 911): "Acts of manifest bad faith or breaches of duty toward the corporation on the part of its president are not binding upon it."

It is useless to prolong the discussion, as it is the well-established rule that where an agent goes beyond the scope of his authority and commits a wrong or fraud to accomplish a purpose designedly his own, the principal is not liable.

There are some features of this case, however, clearly separable from the criminal transactions of the plaintiff company's agents, which preclude an assertion of lack of knowledge on its part of what was done by them. Acting within the scope of their conceded authority the agents did withhold actual information from the company which they should have communicated, but the company can claim no exemptions on this account, for it was business entrusted to their care, and which it had authorized them to do. The Government dealt with them on this basis, payments were made and received by them which the company received, and the relation of principal and agent clearly obtains. The company, as before observed, contracted with Lorenz to furnish satchel straps; of this contract the defendants had no knowledge and were not privy to the contract. The plaintiff's contract expressly obligated it to furnish the straps, and it was its affair to see that the contract was faithfully executed in all respects. The defendants can not be charged with a default in performance due to the remissions of a duly authorized agent of the plaintiff's acting within the scope of his employment. The loss must fall upon the company. Machen did communicate the fact that the Government was paying for satchel straps to Crawford. This was a communication to the company, for Crawford was its agent for this and other purposes, and the defendants had a right to treat it as a communication to the company. The Government was under no obligations to go further. The result, therefore, is that the plaintiff company did not perform its contract, but committed a breach thereof, which is not cured

by its offer to make restitution after the fact. The company never did at any time furnish more than the body of the satchels. This suit, it is true, is predicated upon the written contract. The allegations of the petition are confined strictly to such a cause of action; nevertheless, we believe it is within the province of the court to award judgment as upon a quantum meruit. Clark v. United States (95 U. S., 539); Wardell v. United States (103 U. S., 651); Thomas v. Brownville, etc., R. R. Co. (109 U. S., 522). Defendants practically concede this authority, but contest the sufficiency of proof to sustain the value of the goods furnished. With this contention we agree. A careful examination of the whole record discloses a complete absence of any competent evidence upon which we might predicate such a judgment.

The plaintiff company is entitled to recover under its contract for satchels furnished and known as class "B." These were to be furnished without straps and the contract in this respect was executed.

The court deducts from this judgment the overpayment made by defendants under the contract. This amount totals $3,949.61 for 9,999 satchel straps at 39½ cents each, leaving a total balance due the plaintiff company of $123.63, for which amount judgment will be entered. It is so ordered.

Campbell, Ch. J., concurs in the conclusion.

26 VI. *Judgment of the Court.*

At a Court of Claims held in the City of Washington on the first day of December, 1913, judgment was ordered to be entered as follows:

The Court on due consideration of the premises find for the claimant and do order, adjudge and decree, that the claimant, Frank Crocker, Trustee in Bankruptcy of the Postal Device and Lock Company, do have and recover of and from the United States the sum of One Hundred and Twenty-three Dollars and sixty-three cents ($123.63).

BY THE COURT.

27 VII. *Application for and Allowance of Appeal.*

From the judgment rendered in the above entitled cause on December 1, 1913, in favor of the claimant for the sum of one hundred and twenty-three dollars and sixty-three cents ($123.63), the claimant by its attorney on February 20, 1914, makes application for and gives notice of an appeal to the Supreme Court of the United States.

JAMES H. HAYDEN,
Attorney for Claimant.

Filed February 20, 1914.

Ordered: That the above appeal be allowed as prayed for.
February 24, 1914.

BY THE COURT.

28 In the Court of Claims.

No. 28966.

FRANK CROCKER, Trustee in Bankruptcy of the Postal Device & Lock Company,

vs.

THE UNITED STATES.

I, John Randolph, Assistant Clerk of the Court of Claims certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the findings of fact and conclusion of law filed by the Court; of the opinion of the Court by Booth, J., and the concurrence of Campbell, Ch. J.; of the final judgment of the Court; of the application of the claimant for, and the allowance of, appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims this 26th day of February A. D., 1914.

[Seal Court of Claims.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Endorsed on cover: File No. 24071. Court of Claims. Term No. 373. Frank Crocker, trustee in bankruptcy of the Postal Device & Lock Company, appellant, vs. The United States. Filed February 26th, 1914. File No. 24071.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915, No. 77.

FRANK CROCKER, TRUSTEE IN BANKRUPTCY OF THE POSTAL DEVICE & LOCK COMPANY, Appellant,

v.

THE UNITED STATES.

BRIEF FOR THE APPELLANT.

STATEMENT OF THE CASE.

This is an appeal from a judgment of the Court of Claims in favor of the claimant for the sum of $123.63 (*p. 21*). Claimant contends that on the facts found he was entitled to judgment for $11,946.33. The findings of the court present the case as follows:

On December 6, 1904, the claimant was appointed trustee in bankruptcy of the Postal Device & Lock Company, which had been adjudged a bankrupt on November 18, 1904 (*p. 8, Finding I*). On May 3, 1902, the Postmaster General published an advertisement, inviting proposals to furnish letter carriers' and collectors' satchels of certain grades or classes, the same to be delivered to the Post Office Department in such quantities and at such times as might be desig-

nated by orders to be given by the Postmaster General during a period of four years to begin July 1, 1902. This advertisement was accompanied by specifications, which contained descriptions of satchels of various grades or classes including those designated as classes A, B and C. The specifications for satchels of classes A and C provided that each satchel be equipped with a shoulder strap. There was no such requirement with respect to satchels of class B. (*p. 8, Finding II*). On June 5, 1902, the Postal Device & Lock Company submitted a proposal by which it offered to furnish, among other things: (1) satchels of class A at $2.19 each, (2) satchels of class B at $3.16 each, and (3) satchels of class C at $3.15 each. This was opened at the Department along with proposals made by other bidders, and all of them were considered by a committee of three disinterested persons, appointed for that purpose by the Postmaster General. The committee recommended that a contract to furnish satchels of the classes named be let to the Postal Device & Lock Company. The Postmaster General approved the report and the contract in suit was signed by the company and the Postmaster General under date of June 25, 1902 (*p. 8, Finding III*). Thereby the company engaged to furnish such satchels as the Postmaster General might order, of each of the three classes mentioned. The Postmaster General agreed to pay for satchels ordered by him and delivered by the company if upon examination they were found to fulfill the requirements of the contract. It was stipulated that the payments would be made *"after proper examination and adjustment of accounts and upon the complete and satisfactory delivery of each lot or quantity ordered"*; also that if upon such examination, the Postmaster General should find that the satchels delivered, or any of them, were inferior to the standard prescribed by the contract, he should have the right to reject them or

any of them, or, if he should so elect, he might retain them, paying for them at any rates that he might fix and determine (*pp. 4-7*). When the contract was made the Postal Device & Lock Company was not engaged in the manufacture of satchels or similar articles and had no plant or equipment suitable for the purpose, but had made arrangements with the W. H. Wiley & Sons Company, of Hartford, Connecticut, by which that firm agreed to manufacture the satchels, that the Postal Company might be required to furnish, and to deliver them to the Department for the Postal Company's account. On June 30, 1902, or five days after the contract in suit was signed, the Wiley Company told W. G. Crawford, then vice-president of the Postal Company, that it could not supply shoulder straps for the satchels of classes A and C, because the type of buckle desired by the Department was covered by a patent and Lamb, the patentee, refused to sell the buckles without straps, to any one; or to sell straps, equipped with the buckles, to any one, except the Department. Before the Postmaster General had ordered any satchels, Crawford, vice-president, called on A. W. Machen, Superintendent of the Free Delivery Division of the Department, and told him what the Wiley Company had said with reference to procuring shoulder straps of the Lamb type. Machen replied that the Department needed 5,000 satchels; that they must be furnished at once, and must be equipped with shoulder straps and buckles of the patented type. Crawford replied that the Postal Company would furnish them if the straps could be procured from Lamb, and if Lamb's charge for them were no greater than the price for which the company could procure straps with buckles, of a different type, but meeting the requirements of the specifications. Machen said that the question of cost could not be considered, that

the Department would purchase the straps, ship them to the Wiley Company for use in the manufacture of the satchels, and that the Department's expenditure for the straps would be adjusted with the Postal Company, in accounts to be made up, covering the year's business, under the contract. To this proposition Crawford assented. The Department procured the straps from Lamb and paid him for them with funds belonging to the United States. No notice of this arrangement was given to the Postal Company and it did not know that it had been made. No bill or account, showing that the Department had supplied and paid for the straps, was furnished the Postal Company (*pp. 10-11, Finding IX*). Between the signing of the contract and March 17, 1903, the Postal Company delivered to the Department several lots of satchels, including 5,087 of classes A and C, and 5,000 of class B, all of which had been called for by orders signed by the Postmaster General. All of them were manufactured by the Wiley Company, using for the equipment of the satchels of classes A and C, 5,087, the straps which it had received from the Department. Before submitting a bid to furnish satchels, the Postal Company had made a sub-contract with one Lorenz by which he engaged to furnish the straps and the company had no knowledge of the way in which those used by the Wiley Company had been procured. It believed that they had been furnished by its own sub-contractor. When delivered all of the satchels including those of classes A and C were complete in every detail and met all requirements of the specifications. They were accepted without protest by the Postmaster General and retained and used by the Department. In due course the company rendered bills for the satchels which were paid by the Postmaster General, without protest or question (*p. 9, Finding IV*). From the money thus received, the com-

pany paid Lorenz, its sub-contractor, the sum that it had agreed to pay him for furnishing the straps. Subsequently the Postmaster General ordered additional lots of satchels, including 4,912 of classes A and C. These, like satchels of earlier lots, were manufactured by the Wiley Company and delivered to the Department for the Postal Company's account, subsequent to March 17, 1903. In making them as in making earlier lots, the Wiley Company used straps which were furnished by the Department. When delivered to the Department by the Wiley Company the satchels of the later lots were complete in every detail and met all requirements of the specifications. They were accepted without protest by the Postmaster General and retained and used by the Department. From time to time as they were delivered, the company rendered bills for them. Still being ignorant of the manner in which the shoulder straps had been procured, and believing that they had been furnished to the Wiley Company by Lorenz, the Postal Company charged the Department for them at the full contract rates. On or about April 30, 1903, the Postmaster General refused to pay the Postal Company's bills or to account to it in any way for the satchels included in the later lots. He asserted that fraud had been committed, but omitting to say how or by whom it had been committed, or how fraud, in general, could affect the rights of the company, or relieve the United States from paying for satchels which it had accepted and retained, and which the Postmaster General did not offer to return to the Postal Company (*p. 9, Finding V*). In August, 1902, the Postmaster General ordered the annulment of the contract on the ground of fraud but still kept the satchels and refused to account for them (*pp. 11-12, Finding XI*).

The reason why the company remained in ignorance of the fact that the shoulder straps were being purchased by

the Department and delivered by it to the Wiley Company instead of being furnished by Lorenz, appears from these facts found by the Court of Claims: About the time when the Postmaster General advertised for proposals to furnish the satchels, Machen conceived a scheme by which he could secure a part of any profit that might arise from their sale to the Department. For that purpose he associated with him Crawford, then vice-president of the Postal Company, and one Lorenz. The three met on June 3, 1902, and agreed upon the following plan: Crawford was to induce the Postal Company to enter into an agreement with Lorenz, by which the latter would engage to prepare the company's bid to furnish the satchels, and if a contract should be awarded to the company, to co-operate with Crawford in placing sub-contracts for the manufacture of the satchels or the furnishing of parts thereof, and to conduct various other details of the business. For these services the Postal Company was to be induced to pay Lorenz any balances that might remain in its hands of sums received from the Department, after deducting therefrom the cost of the satchels and a profit at the rate of twenty-five cents per satchel (*p. 10, Findings VII-VIII*). It was agreed between Machen, Crawford and Lorenz that any money that Lorenz might receive from the Postal Company should be divided between the three men; one-half of it going to Machen, and one-fourth each to Crawford and Lorenz. For obvious reasons this arrangement was to be kept a secret between the three, and under no circumstances disclosed to the Postal Company (*pp. 12-14, Findings XI-XII; Opin. pp. 17-18*). At or immediately after this meeting, Crawford prepared an agreement for signature by Postal Company and Lorenz which he induced the company to sign. It provided for the employment of Lorenz for the purpose above mentioned (*p. 10, Finding VII; pp.*

12-14, Finding XII). In making this agreement the Postal Company acted in good faith. There was nothing about the transaction that could lead the company to suspect that such a sub-contract with Lorenz might be used to further any fraudulent practice and least of all one that might cause loss to the government. There is nothing to indicate that when Machen, Crawford and Lorenz formed their plan above mentioned, they or anyone of them had any thing in mind except to impose upon the Postal Company (*p. 17.*) In August, 1902, before any satchels had been ordered by the Postmaster General, and probably about the time when Crawford and Machen made the arrangement with respect to the furnishing of shoulder straps, the first agreement between the Postal Company and Lorenz was cancelled and a new one made, by which Lorenz engaged, among other things, to furnish all shoulder straps that the Postal Company might require for the equipment of the satchels ordered by the Postmaster General (*p. 10, Finding VIII*). As a matter of fact Lorenz never furnished any of the straps, nor did he render any other services which he had agreed to perform in connection with the furnishing of satchels. But the company was led to believe and did believe that he had done so and that the straps which were used by the Wiley Company and which accompanied the satchels, when delivered to the Department had been supplied by Lorenz. As stated above no complaint was made by the Postmaster General that the satchels furnished were defective. In fact they were not defective in any respect. The prices payable for the satchels were not reduced by the Postmaster General as the contract empowered him to do in case he found them defective (*p. 6*).

At the rates named in the contract, the price of the lots of satchels which the Postmaster General retained but refused to pay for, amounted to $15,895.94 (*p. 9, Finding*

V). For the shoulder straps used to complete 9,999 satchels of classes A and C (*i. e.*, the 5,087 satchels of those classes for which the Postmaster General paid the company and the 4,912 satchels of those classes for which he refused to pay), the Department paid Lamb at the rate of 39½ cents each, making the Department's outlay for material which the Postal Company had engaged to furnish, the sum of $3,949.61 (*pp. 9-10, Finding VI*). The claimant is seeking to recover $11,946.33, being the difference between the price payable to it on account of satchels furnished to the Department and the sum that the Department paid Lamb. The claimant concedes that the United States should be credited for the straps that the Department furnished. When the suit was brought claimant did not know their value, but, in his petition, proposed that the defendant show by counter-claim what was the reasonable value of such straps, and conceded that the United States was entitled to credit to that extent on its account for satchels furnished. No counter-claim was filed by the defendant and no evidence on the subject was offered by it. It appears, however, that the Department had paid for the straps the amount stated above. Obviously, as patentee, having a monopoly of the sale of such articles, Lamb made a greater charge for them than the price for which the Postal Company would have procured straps with buckles, of another type, but meeting all the requirements of the contract. Nevertheless, the Postal Company waives any objection to the government's receiving credit for the full sum paid to Lamb.

In computing the amount of the judgment entered by it the Court of Claims *charged* the company with the sum that the Department paid Lamb, but notwithstanding that refused to *credit* the company *with anything at all for the satchels of classes A and C* delivered subsequent to March

17, 1903, of which the Lamb straps formed part. This results in an absurdity, for one of two things must be admitted. Either (1) the government procured the straps from Lamb for its own use and received and kept them, in which event it would have no right to charge the Postal Company for them, or else (2) the government acting as a material man furnished to the Postal Company the kind of straps that it wanted and which the company could not procure, and received completed satchels from the company. In that case it must pay the company for the satchels at the contract price, less the cost of straps. The government can not collect for the straps and keep them.

The judgment is based upon an account made up in a manner that ignores the fundamental principles of fair dealing, viz:

Contract price of satchels furnished by Postal Company prior to March 17, 1903 (*p. 9*):		
5,032 Class A Satchels at $2.19 each	$11,020.08	
5,000 Class B Satchels at $3.16 each	15,800.00	
55 Class C Satchels at $3.15 each	173.25	
	$26,993.33	
Deduction on account of payment made by the United States for straps, used to equip above satchels of Classes A and C.—5,087 straps at 39½ cents each—(*pp. 9-10*)..	2,009.37	
		$24,923.96

Credit given for satchels furnished by Postal Company subsequent to March 17, 1903 (*p. 9*):			
3,835 Class A Satchels with straps	(nothing)		
1,289 Class B Satchels at $3.16 each	$4,073.24		
1,077 Class C Satchels with straps	(nothing)		
	$4,073.24		
Deduction on account of payment made by the United States for straps used to equip above satchels of Classes A and C—4,912 straps at 39½ cents each—(*pp. 9-10*)	1,940.24		
		2,133.00	
			$27,056.96
Deduction for payments made by the United States to the Postal Company for satchels furnished prior to March 17, 1903 (*p. 9*)			26,993.33
Amount of judgment for claimant (*p. 21*)			$123.63

The reason that the court assigned for refusing to give the Postal Company any credit at all for the later lots of class A and class C satchels is most extraordinary. It says that because the Department furnished to the Wiley Company the shoulder straps used to equip satchels of those classes, the Postal Company did not deliver the satchels in conformity with the requirement of its contract and can not recover the contract price or anything at all. The fact is that when delivered the satchels were equipped with straps and were in exact conformity with the requirement of the

contract. By a purely theoretical separation of the straps from the body portions of the satchels, the Court of Claims has evolved a conclusion by which the government may keep exactly what it bargained for without paying anything for it.

The satchels in question were exactly like those of the same classes that the Postal Company delivered to the Department before March 17, 1903. For the earlier lots the court credited the Company at the full contract rates, and charged the company with the cost of straps. There was no difference between the earlier and later satchels or in the manner of their production or delivery. There was nothing that could justify a difference in the way of accounting for the earlier and the later deliveries.

Another peculiar thing about the court's account is that while it refused to allow the company anything whatever for the 4,912 satchels of classes A and C, on the pretext that the company had not supplied the shoulder straps used to complete them, it charged the company for the 4,912 shoulder straps, which in fact were attached to the satchels and made them complete. In this way the court would make the Postal Company pay the government for straps that it delivered to the government, and at the same time relieve the government from paying anything to anybody for either the straps or satchels.

The fraud charged by the Postmaster General consisted of acts done in furtherance of a scheme devised by his own subordinate. If the fraud had not been discovered, the government might have paid twice for the straps, but the benefit would have gone to the official and his associates and no part of it could have come to the Postal Company. Is that any reason why the government should get the straps and the satchels too at the expense of the Postal Company, which was no more implicated in the fraudulent transaction

than was the government itself? Why should the government be permitted to derive actual benefit from the fraud at the expense of an innocent party? General cries of fraud and the uproar produced by them can not justify the judicial sanction of a result that would be dishonest, even though the government might gain by it. When a party to a contract has been guilty of fraud in its performance or is chargeable with knowledge of fraud committed by third parties to the detriment of the other party, the law will not permit the first to maintain a claim which would result in putting the second in a worse position than he would have occupied but for the fraud. In protecting an innocent parties courts have gone to considerable lengths and have compelled parties to the fraud and those privy to it, to indemnify an innocent loser. But we have no such case. The government is not and never has been a loser. The judgment of the Court of Claims would make the government a gainer. The court found (*pp. 10-12*) and repeated in its opinion (*pp. 17-19*) that the Postal Company was innocent of any participation in the fraud and was a victim to a greater degree than the government; that the Postal Company acted in good faith, throughout the transaction, being in ignorance of the dealings of Machen, Crawford and Lorenz. It may be true, as stated by the Court of Claims (*p. 19*), that the company's misfortune could not relieve it of the obligation which it assumed by its contract to deliver satchels of classes A and C, equipped with straps. But it is a fact that the satchels were equipped with straps and it would seem that the Postal Company's obligation would be fully satisfied by deducting the sum that the government paid for the straps from the price that the government agreed to pay the Postal Company for the completed satchels, actually received from the company? Under the contract the company could have

procured the straps from the government or from anyone. So far as the company was concerned the discovery of the fraud was no more than the discovery of the fact that it was indebted for the straps to the government instead of its sub-contractor.

The following statement shows the extent to which the government would benefit by the fraud if the judgment of the Court of Claims were permitted to stand:

The government received and retained satchels, classes A, B and C for which it contracted to pay:		
Deliveries made before March 17, 1903,		$26,993.33
Deliveries made after March 17, 1903,		15,895.94
Total		$42,889.27
The government has paid for those satchels:		
To the Postal Device & Lock Company (*Finding IV, p. 9*)	$26,993.33	
To Lamb for straps (*Finding VI, pp. 9-10*)	3,949.61	30,942.94
Balance of price that government agreed to pay for the satchels furnished, *but which the judgment of the Court of Claims would relieve it from paying...*		$11,946.33

Specification of Errors.

The errors of the Court of Claims assigned by the appellant and intended to be argued are these:

1. The said court erred in failing and refusing to hold that on the facts found the claimant was entitled to judgment for the sum of $11,946.33.

2. The said court erred in holding that on the facts found the claimant was not entitled to recover for satchels of classes A and C which the Postal Device & Lock Company delivered to the Post Office Department and which were accepted by said Department after March 17, 1903.

3. The said court erred in refusing to hold that the claimant was entitled to recover for the satchels of classes A and C, which were delivered to and accepted and retained by the Post Office Department, after March 17, 1903, a sum representing the difference between the contract price of said satchels and the sum paid by said Department for shoulder straps, which it furnished to the Postal Company for use in completing the said satchels.

4. The said court erred in holding that there was no competent evidence of the value of the satchels furnished by the Postal Company to the Post Office Department.

Argument.

I.

The fraudulent practices mentioned by the Court of Claims did not affect the rights or obligations that the parties acquired or assumed by the contract in suit.

This proposition is sustained by the findings and opinion of the court below (*pp. 18-20*). It said:

> "The findings disclose the absolute want of any actual knowledge, participation with, interest in, or,

direction to any of its (Postal Device & Lock Company's) agents to do anything unlawful. If such knowledge is to be imputed the imputation must arise from inferences gleaned from the positive testimony in the record, or be chargeable to it (Postal Company) by law. The conspiracy to defraud the Government punishable under Section 5440, Revised Statutes, while doubtless concocted previous to the letting of the contract, was peculiar in this respect that it did not contemplate deceit in the quality or price of the supplies to be furnished. No claim is made that the letting or terms of the contract as awarded were at all tainted. It was wholly a conception to lay illegal hands upon a portion of the legitimate profits of the contractor and share the same with a Government officer charged with the administration of the contract. It is of course obvious that the administration of the contract under the supervision and control of a corrupt fiduciary of the Government was fraught with great possibilities as to graft; nevertheless, there is nothing in all these circumstances, standing alone, to exclude the idea of innocence upon the part of the contractor. Weighing against these circumstances, even if they were sufficient to indulge a suspicion of guilt, are the correlative transactions of the plaintiff company as distinct from the conduct of its agents. The record presents uncontradicted proof that no portion of the tainted money ever reached its exchequer; that it faithfully discharged its monetary obligations under its contract with Lorenz, and at no time retained, nor does it now possess a single penny above its legitimate profits under the contract. Motive for the commission of crimes is always a pertinent inquiry. Fraud is not usually practiced as a pastime, the participants contemplate an unjust accumulation and conceive methods to bring it about. The plaintiff not only does not profit by anything done by its agents, but, on the other hand, must be penalized to the extent of the payments corruptly made by Machen for the satchel straps, this money it paid to Lorenz under an honest mistake that he was

complying with his agreement with it to furnish the straps. Defendants insist that the terms of the agreements between Lorenz and the plaintiff are in themselves so unusual as to excite suspicion. The insistence would be forcible indeed if the plaintiff had been and was then engaged in the manufacture of satchels and was fully informed upon every detail of the same. The business was, however, entirely new to it, outside its usual occupation, and there is nothing to be implied from its engagement of Lorenz. Many contracts have been made by the Government with contractors not at the time engaged in the manufacture of the supply contracted to be furnished. The Government was alone concerned in getting the supply, in accord with its specifications at the lowest responsible price. The contractor entered into a bond to fulfill his contract, and it would certainly be a somewhat violent presumption to attach guilt to a contractor because he may have been overreached by a sub-contractor. It is a matter of little difficulty to view a (past) transaction, which ultimately resulted in fraud, and after being in possession of all of the details of the criminal offense, wonder why each one of the deceiving movements did not arouse our suspicion. The plaintiff had confidence in Crawford; he was its trusted agent, clothed with authority to solicit and contract for business. Lorenz was his discovery and it was no more remarkable transaction for the plaintiff to adopt his suggestions and ratify his contract than it would be for any other corporation to do so. It is done repeatedly, every day. It is certainly not to be presumed that the company retained in its employ an agent whom it distrusted. The truth about the whole matter is that the company was the victim and suffered equally with the defendant * * * It is useless to prolong the discussion as it is the well established rule that *where an agent goes beyond the scope of his authority and commits a wrong or fraud to accomplish a purpose designedly his own, the principal is not liable.*"

With the facts established beyond the possibility of dispute it is not anticipated that the Government will attempt to dispute the correctness of the conclusion which the Court of Claims draws from them.

With both parties innocent of fraud, the rights and obligations of each, arising from the contract must be governed by the terms of the contract, and neither party should be placed in a better position than that contemplated by his bargain, at the expense of the other party.

The Government was entitled to receive from the company satchels of certain types. On receipt of such satchels it became obligated to pay for them at the rates named in the contract. The specifications for satchels of classes A and C required that each one be equipped with a shoulder strap. The satchels delivered by the company were equipped with shoulder straps and were in all other respects equal to the requirements of the contract. In the absence of any other factor, the government would have been obligated to pay for the satchels of classes A and C, at the rates named in the contract and without any deduction therefrom. But after they had been delivered by the company and accepted by the Postmaster General and put in service by the Government, it came to the knowledge of both parties that the straps had been furnished to the Postal Company by the Government instead of by a third party. The only change in the situation which resulted from this was that the Government instead of the third party was entitled to be paid for the straps. This payment could be effected readily by allowing the Government to deduct an amount equal to its outlay for straps, from the sums that it already owed the Postal Company for the satchels delivered. The Government can not avoid its obligation to credit the company, for deliveries made in conformity with the contract, by resorting to the fiction

that satchels of classes A and C were not equipped with straps, *when as a matter of fact they were so equipped.*

The error committed by the Court of Claims was that in addition to requiring the Postal Company to meet an obligation which it had assumed and which it was entirely ready to meet, the court imposed upon it the obligation to furnish satchels for nothing, which it had not assumed. This result was attained by disregarding the fact and resorting to the fiction that the satchels delivered by the company were not provided with straps, although the judgment itself bears evidence that they were.

II.

If the fiction about the omission of straps mentioned by the Court of Claims had been the fact, and if it had been true that the company delivered only the body portions of satchels of Classes A and C, the rates named in the contract would have furnished evidence by means of which the value of the incomplete satchels should have been ascertained.

In the case of *Salomon v. United States* (*19 Wall., 17, 19*), it appeared that the claimant entered into a formal contract, with the Quartermaster's Department to furnish a certain quantity of corn, making deliveries from time to time as orders for them should be given by the Quartermaster. The period within which all of the corn was to be furnished and the place where all deliveries were to be made were named in the contract. Lots amounting to something less than the whole quantity were delivered within the contract period. Later the remainder was furnished and receipted for by the Quartermaster's clerk. It was deposited in the Government's storehouse, mentioned as the place of

delivery. The corn was sound when delivered, but deteriorated in consequence of the defective condition of the storehouse. The government refused to pay for it. The claimant brought suit. The Court of Claims rejected the claim holding that the delivery to the Quartermaster's clerk was not a delivery under the terms of the contract (*7 C. Cls., 482*). On appeal this was reversed, the Supreme Court saying:

> "Whether we regard this last delivery, made in October as made under a verbal extension of the time stipulated in the original contract, or consider it as a new transaction, in which the government received and took possession of the corn and used part of it and permitted the remainder to be injured in its hands, we think the claimant is equally entitled to pay for it, * * * when the quartermaster in charge receives of a person, corn for the government, gives a receipt and voucher for the amount and the price, and the government uses such part of it as it wants, and suffers the remainder to decay by exposure and neglect *there is an implied contract to pay the value of such corn, which value may in the absence of other testimony, be presumed to be the price fixed in the voucher by the quartermaster.*"

Apply that rule in the present case and we find no difficulty in determining the value of the articles which the claimant furnished and the government accepted and used. The contract in suit was let after competition, the award being made to the lowest responsible bidder (*p. 19*). The satchels of classes A and C were exactly what the government bargained for, and, in the absence of other testimony, the rates named in the contract must be presumed to represent their value. We know just how much should be deducted from the contract price to reimburse the government

for the outlay that it made for straps. We feel compelled to call attention, again, to the fact that the court followed this rule in making up its award for identical satchels delivered under the same conditions before March 17, 1903, and are at a loss to see what reason the court could have had for abandoning that rule when it came to make its award for the satchels delivered after March 17, 1903.

It is submitted that whether the judgment be upon the contract or upon a *quantum meruit* the result should be that the claimant recover $11,946.33.

JAMES H. HAYDEN,
ROBERT C. HAYDEN,
Of Counsel for the Appellant.

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In the Supreme Court of the United States.

OCTOBER TERM, 1915.

FRANK CROCKER, TRUSTEE IN BANKRUPTCY of the Postal Device & Lock Co., appellant,
v.
THE UNITED STATES.
No. 77.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

STATEMENT.

This is an appeal from a judgment of the Court of Claims in favor of appellant in the sum of $123.63, for alleged damages growing out of a contract for furnishing certain letter carriers' and collectors' satchels to the Post Office Department.

Appellant contends that he "was entitled to judgment for $11,945.33." The contract out of which the claim grew being an indivisible one, the form of appellant's appeal—that is, the claim for $11,945.33—requires a reconsideration of the whole question and raises the query again as to whether

there should have been any judgment at all in his favor.

As all transactions in connection with the contract occurred with the Postal Device & Lock Co. long prior to the bankruptcy proceedings in which Frank Crocker was appointed trustee, hereafter appellant will be designated as appellant company.

Appellant company, together with George E. Lorenz, desired to obtain a contract with the Government for letter carriers' and collectors' satchels. It thereupon entered into an agreement (Finding XII, Rec. p. 12) with Lorenz, hereafter called appellant company-Lorenz contract, whereby he was to give his services jointly with W. G. Crawford, vice president, general manager, and attorney of appellant company, for the purpose of determining bids to be made, and securing the contract from the Government. It was stipulated that the "bid or bids" were to be presented in the name of appellant company and if the contract was secured it was to be let in its name. It was further stipulated that Lorenz should not make any bid, nor participate in any other bid, nor furnish any figures, aid or assistance to any other persons in obtaining such a contract. For his services Lorenz was to receive the profits over and above a 25-cent profit on each satchel. The 25 cents was to go to the company.

Previous to the execution of the appellant company-Lorenz contract, one A. W. Machen, then superintendent of the Free Delivery Division of the

Post Office Department, conceived the idea of sharing in any profits that might accrue from the sale of satchels to the Government. (Rec. p. 10.) He associated himself with W. G. Crawford, vice president and agent of appellant company. Crawford, Lorenz, and Machen had entered into an agreement whereby Lorenz was to share his profits received from appellant company with Crawford and Machen as follows: Crawford, one-fourth; Machen, one-half; and Lorenz, one-fourth. The result of their machinations produced the Lorenz contract.

Crawford and Lorenz, as agents of the company, carried out their joint instructions, and the Government awarded the contract to appellant company to cover a period of four years, beginning July 1, 1902, for such satchels as might be ordered for the Free Delivery Service at the following prices per satchel: Class A satchels, with shoulder straps, $2.19; class B satchels, *without* shoulder straps, $3.16; class C satchels, with shoulder straps, $3.15. (Findings II and III, p. 8.)

Appellant company did not manufacture satchels nor the material of which they were made, and in order to execute its contract with the Government, it contracted through its agent, Crawford, with William H. Wiley & Son Co., of Hartford, Conn., to manufacture and furnish the satchels. On June 30, 1902, the Wiley Co. notified Crawford that they could not furnish the straps provided for in the specifications, because the buckle required was a patented article which they could not procure. (Finding IX, Rec. pp. 10, 11.)

Thereupon Crawford, acting for the appellant company, in a conversation with Machen, inquired if any satchels were needed. Machen replied that the department wanted 5,000 at once, and that they must be furnished with Lamb straps. This name was derived from the buckle on the strap, a patented article made by George E. Lamb, of New York City. Crawford agreed to get the Lamb straps if they did not cost any more; whereupon Machen said that the Government would get them direct from Lamb, pay for the same, ship the straps to the appellant company's manufacturer, and that they would adjust any difference later. To this Crawford assented. (Rec. p. 11.)

Shortly thereafter appellant company, through its president, Wade Chance, entered into a supplemental contract with Lorenz whereby appellant company was to have exclusive right to contract for what was termed the bodies of the satchels, while Lorenz was to have the exclusive right to place the contracts for the straps. (Finding VIII, Rec. p. 10.)

Under the terms of this supplemental contract the division of profits was changed so that Lorenz was to receive less and the company more than under the original agreement. Subsequent to the making of this supplemental contract (Finding IX) Rec. p. 11, appellant company, through its agent, Crawford, sublet the making of the bodies of the satchels to William H. Wiley & Sons. The straps for the A and C classes (there being none used on the B class) were delivered to Wiley & Sons at Hartford,

Conn. The assembled satchels were then forwarded to Washington, and the Government made payments from time to time up to March 17, 1903, when 10,087 satchels, the contract price for which was $26,993.33, had been delivered and the money paid to appellant company, the Government paying appellant company for the straps as well as the bodies of the satchels. Subsequent to that date and until April 30, 1903, an additional 6,201 satchels, at a contract price of $15,895.94, were delivered to the Government, but the latter refused to pay for the same, it having developed that the Government had been paying for the straps to George Lamb at the same time it was paying for them to appellant company. Out of all payments that had been received by appellant company, Lorenz received his contract share. He, in turn, divided with Machen and Crawford.

In August, 1903, the Postmaster General rescinded the contract on the ground of fraud, and this suit was subsequently commenced.

Appellant company's position is that it had no knowledge and took no part in the conspiracy of Lorenz, Machen, and Crawford, its agent and vice president; that as it delivered the 6,201 satchels and the Government received the same it should be paid for them, minus the cost of the straps supplied by the Government for the A and C classes of satchels; that since the court found that appellant company should be paid for the class B satchels, for which no straps were required, by the same token it should be

paid for the A and C satchels, minus the cost of the straps supplied by the Government.

The Government maintains that the entire transaction was an indivisible one and from the inception of the conspiracy between appellant company's agents Crawford and Lorenz, and Machen, fraud flowed through the execution of the contract between appellant company and Lorenz and through the various acts performed under the contract of appellant company with the Government; that the contract being so permeated with fraud the Postmaster General rightfully rescinded the same; that appellant company having placed the entire management of its contract with the Government in the hands of Crawford, its vice president and agent, and having received all of the profits and participated in a part of them through the actions of its agents Crawford and Lorenz, is chargeable with constructive knowledge and it can not, therefore, sue on the contract, but is left to an action on a *quantum meruit;* that suit on a *quantum meruit* fails (*a*) because of lack of proof of costs of the various materials in the satchels, and (*b*) because section 1086 of the Revised Statutes forfeits any claim of appellant company to the Government; that assuming that the company was innocent of all wrong, still it could not sue upon the contract for the reason that the latter was tainted by fraud, and illegal contracts are unenforceable regardless of knowledge, motive, or intent of one of the parties. Hence it could only sue upon a *quantum meruit.*

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On the other hand, the court's opinion holds that appellant company was not chargeable with *actual* knowledge of the fraud; that there were certain acts with which the company was chargeable, because the acts were those of its agents performing within the scope of the contract, namely, the company's failure to supply straps for the satchels of classes A and C when it knowingly had received payment for the same from the Government; that the failure to supply the straps, notwithstanding such knowledge, was a mere breach of contract and having breached the contract it can not now sue upon it, but is left to a *quantum meruit;* that a *quantum meruit* fails because of lack of evidence as to the cost of the various articles in the said A and C classes, requiring straps; that the company was entitled to recover on class B satchels, for they were to be made without straps, and the contract, so far as class B satchels were concerned, was therefore performed on the company's part. (Rec. pp. 20, 21.)

ARGUMENT.

I.

This was one indivisible transaction permeated with fraud, of which appellant company was chargeable with constructive knowledge.

This transaction has been considered by the court as composed of several separable stages.

The Government maintains that while there are several contracts to be considered and the acts of parties under those contracts with parties outside the contracts, nevertheless it is one indivisible trans-

action, and that as fraud permeated it through its entirety the Postmaster General was right in rescinding it.

From appellant company's point of view the object of the transaction was the sale of satchels for a profit to the Government. To this end it entered into a conspiracy, one of the objects of which was to enable a Government officer to wrongfully participate in the fruits of a contract, the satisfactory performance of which was left to his judgment. It was in furtherance of the company's desire to secure the satchel contract and in order that the individual conspirators, as well as the company, might derive profits therefrom, that Machen, a Government fiduciary, became involved. His position enabled him to have charge of the contract for the Government and at the same time to have an interest antagonistic to that of his employer. Lorenz was the go-between or intermediary, and Crawford, appellant company's agent, was, under the provisions of the appellant company-Lorenz contract, in full charge of the company's interests. The conspiracy having existed, the question arises, can appellant company, linked up as it was with these men, be charged with constructive knowledge of the acts of the conspirators?

The appellant company-Lorenz contract designated Crawford as its representative to act jointly with Lorenz in securing the contract from the Government, and through their joint efforts it was obtained; and through Crawford all steps were taken for the manu-

facture and delivery of the satchels by appellant. Through Crawford appellant acquiesced in the Government supplying the straps when the company ought to have furnished them itself. Through him it actively aided a corrupt public official to injure the Government, and received the fruits of this injury.

The Government maintains that these facts show the agreement to have been unlawful and fraudulent, one purpose of which was to defraud the United States. In *Crawford* v. *United States* (212 U. S. 183) Mr. Justice Peckham, speaking for this court, said (192):

> Its almost necessary result, if carried out, would be to defraud the United States. *The fraud might be perpetrated by getting the contract at a higher price than otherwise would have been obtained,* or if already obtained, then the United States might be defrauded by the General Superintendent (Machen) accepting improper satchels, not made of the materials, or in the manner specified in the contract, or by his requiring the delivery of more satchels than were sufficient for the wants of the department. * * * Such a corrupt agreement, if carried out, would naturally, if not necessarily, result in defrauding the United States by causing it to pay more for satchels than was necessary, or for more satchels, or possibly inferior ones, than it otherwise would. [Italics ours.] *Armstrong* v. *Ashley* (204 U. S. 272), *Fidelity and Deposit Co.* v. *Courtney* (186 U. S. 342, 362).

In the case of *Tool Company* v. *Norris* (2 Wall. 45, 56), on the subject of illegal agreements, the court said:

> It is sufficient to observe, generally, that all agreements for pecuniary considerations to control the business operations of the Government, or the regular administration of justice, or the appointments to public offices, or the ordinary course of legislation, are void as against public policy, without reference to the question whether improper means are contemplated or used in their execution.

Having by the terms of the appellant company–Lorenz contract made Crawford its agent; having held him up to the world as the one authorized to attend to the performances of the contract on its part; and having accepted the fruits of the contract, it thereby made itself chargeable with constructive knowledge and ratified his every act, both in securing as well as performing the contract. Thus it became a party to the conspiracy.

In *Krumm* v. *Beach* (96 N. Y. 398, 404) the syllabus, which is fully borne out by the opinion, is as follows:

> In an action against a husband and wife for fraud in the sale of lands, the complaint alleged in substance that plaintiff, induced by the false and fraudulent representations set forth, made by the defendants, purchased of the wife certain lands. The defendants answered jointly. The answer admitted the purchase by plaintiff from the wife, and its averments showed that the husband in the

> negotiations assumed to act for the wife and as her agent. It appeared upon the trial that the negotiations were between plaintiff and the husband; that the contract of sale was made by the latter in his own name, and that he made the representations complained of without the knowledge of his wife. She, however, conveyed the land to plaintiff and received and retained most of the proceeds of the sale. *Held*, that the case was brought within the rule making the receipt and retention by a principal of the fruits of a fraud involve a liability on account of it, although himself innocent of personal participation in the wrong; and that, therefore, a motion on the part of the wife for a nonsuit was properly denied.

The findings of the court below relieve appellant company of actual knowledge, but it is immaterial whether it had such knowledge. The court seems to indicate in its opinion that constructive knowledge is imputable to appellant company since it says (Rec. p. 20):

> There are some features of this case, however, clearly separable from the criminal transactions of the plaintiff company's agents, which preclude an assertion of lack of knowledge on its part of what was done by them. Acting within the scope of their conceded authority the agents did withhold actual information from the company which they should have communicated, but the company can claim no exemptions on this account, for it was

> business intrusted to their care, and which it had authorized them to do. The Government dealt with them on this basis, payments were made and received by them which the company received, and the relation of principal and agent clearly obtains.

Moreover, appellant company can not escape by asserting that the plan of the conspirators and in particular of its vice president, general manager, and attorney, was concocted before it became associated with Lorenz in the appellant company-Lorenz contract, under the terms of which from that date forward Lorenz and Crawford were made joint agents for appellant company.

In *Stewart* v. *Johnson* (3 Harr.; 18 N. J. L. 87), a case involving the question of a fraudulent conveyance to avoid creditors, executed by a woman through her husband's agency, the court said (p. 89):

> That Johnson did not know of Wining's fraudulent intent at the time that he, Winings, made these declarations, does not affect the question. If an individual connect himself with others in a conspiracy to defraud, or for any other purpose, it would be no answer to say that the whole plan was concocted before he became an associate. By connecting himself with them, and aiding in the execution of their plan, he adopts their prior acts and declarations, so far at least as they constitute a part of *res-gestae*, as his own, as much so as if he had been present and assented to each successive step in carrying out and consummating the fraud.

Nor can appellant be excused on the ground that Crawford's acts were for his own benefit, and that he and his associates eventually received a part of the tainted money. It is immaterial what became of the money received from the Government by the company. The Government paid the contract price to appellant company and the money went directly into its treasury, whereby it gained control of the same. As a matter of fact, it kept a large share thereof. While Crawford's acts may have been for himself, it is equally true they were also for the benefit of appellant company, and it did benefit thereby and has never expressly disavowed his acts in obtaining and performing the contract.

Having shared the fruits of the transaction, tainted as it was by the illegal and fraudulent acts under the appellan company-Lorenz contract, appellant company can not be held innocent, even though it did not have actual knowledge of its agents' wrongful acts.

In *Fairchild* v. *McMahon* (139 N. Y. 290), which was an action to foreclose a purchase-money mortgage, where the mortgagor defended on the ground that fraud with regard to the value of the land for which she was exchanging her land had been practiced upon her by the mortgagee's agent, whereby she was induced to make and deliver the mortgage, the court said (p. 295):

> All persons who acted for or in the name of Cain, or with his consent, in bringing about the transaction must now be deemed to be

his agents, and as he accepted the fruits of their efforts in this regard and took the title to the bond and mortgage, which was a part of the result of their negotiations, and transferred them to the plaintiff, all the methods employed by either Yoran or his broker to procure the agreement for an exchange and the mortgage in suit are imputable to the person in whose name they acted, and who voluntarily received the securities thus procured. He could not, even though innocent, receive a mortgage thus procured, and at the same time disclaim responsibility for the fraud by means of which the defendant was induced to deliver it. (*Krumm* v. *Beach*, 96 N. Y. 398).

It follows that appellant having constructively taken an active part in the conspiracy, it is now placed in a position where it can not complain of the rescission of the contract by the Government. The only remedy appellant could have had was on *quantum meruit*.

II.

In addition to appellant company's constructive knowledge, the contract was inherently unlawful and therefore unenforceable.

The Government maintains that the contract, aside from the question of knowledge on the part of appellant company, was illegal because of Machen's interest therein and consequently was and is unenforceable. Appellant company was the agency, innocently or guiltily, which rendered possible the injurious consequences flowing from the conspiracy.

Though not a sham corporation or alter ego of Machen, it was nevertheless an intermediary for him in this transaction and the means whereby he secured an interest in the contract and at the same time effectually concealed it. True, he was not a stockholder in or officer of the company, but he participated in the large share of the profits secured to Lorenz by contracts with the company, and, since Lorenz's rights were contract rights, Machen's interests was more direct and more potent, so far as the Government was concerned, than if he had been a member of the contracting corporation. His recourse to a second intermediary rendered his interest more remote from the standpoint of detection, but not from that of participation, and the reality of his participation and interest and the probability of injurious consequences to the Government are shown by the fact that he actually shared in the money profits of the transaction, while in a position to swell those profits to the injury of the Government. Furthermore, the strap fraud proves conclusively the efficacy of his interest for evil.

> Any direct or indirect interest in the subject matter is sufficient to taint the contract with illegality if the interest be such as to affect the judgment and conduct of the officer either in the making of the contract or in its performance. (2 Dillon, Municipal Corporations (5th ed.), p. 1146.)

It has been held that the ownership of stock in contracting company, and even its possession as pledgee,

is sufficient to taint the whole transaction with fraud, since, as we have shown, the law does not regard the motives of the fiduciary, but only the probable effect of the antagonism existing between his duty and his interest, human nature being what it is. (*San Diego* v. *San Diego & L. A. R. Co.*, 44 Cal. 106; *Drake* v. *Elizabeth*, 69 N. J. L. 190; *Foster* v. *Cape May*, 60 N. J. L. 78.)

In the case of *Heughes* v. *Board of Education* (37 App. Div. (N. Y.) 180) it was held in substance that recovery on a public contract would be denied because the nominal contractor had acted as the intermediary and a cover for a city official incompetent to have the contract. (*Jacques* v. *City of Louisville*, 106 S. W. (Ky.) 308.)

Moreover, illegal contracts are unenforceable regardless of the knowledge, motive, and intention of the parties, such considerations being material only in the determination of the right of one of the parties to such a contract to recover from the other the value of the benefits conferred in misreliance upon the illegal agreement. And such recovery, if allowed, is only in *quasi contract* and never on the illegal contract itself, the latter never being saved by the innocence of the parties except in unusual cases where intent is the essence of the offense. (Cent. Dig., Contracts, vol. 11, sec. 462; Woodward, Quasi Contracts (1913), ch. 8, p. 210, *et seq.*; *Hentig* v. *Stantiforth*, 5 Maul. & Sel. 122; *Oom* v. *Bruce*, 12 East. 225.)

In its contract with Lorenz appellant company played squarely into Machen's hands, and, innocent

or guilty, created an illegal situation, so that between

Gourkey v. Toledo & Ohio Railway (146 U.S., 536)
omas v. Brownville, etc., R. R. Co.(109 U.S., 522)
ited States v. Carter (217 U. S., 286)
rdell v. Railroad Company (103 U. S., 651)
st v. Camden (135 U. S., 507)

Appellant can not recover upon quantum meruit (a) because of lack of proof of labor and materials furnished; (b) because Revised Statutes, 1086, forfeits a fraudulent claim to the Government.

A.

Because of Lack of proof of labor and materials furnished.

Appellant company can not recover upon a *quantum meruit* because it has failed to adduce sufficient evidence of the value of the satchels manufactured and delivered to the Government to arrive at the cost thereof, or to warrant a judgment in its favor. This value, moreover, is strictly limited to the value of the labor or materials, and not their value to the appellees. (2 Sedgwick on Damages, sec. 649 et seq.) The contract prices can not be reckoned with, for they were obtained by methods against public policy and tainted with fraud. Moreover, there was no general market value for the satchels in evidence, and since the original contract was essentially for

work, labor, and materials, rather than for the sale of goods, the only competent and proper factors for computing values are cost to the contractor and fair profits. A difference of opinion obtains as to the allowance of the latter. (2 Dillon, Municipal Corporation, 5th ed., p. 1150, note 1; *Berka* v. *Woodward*, 125 Cal. 119.) The court held that there was insufficient evidence upon which to predicate a judgment for the fair value of the satchels received and retained by the Government. It said in its opinion (Rec. p. 21):

> The company never did at any time furnish more than the body of the satchels. This suit, it is true, is predicated upon the written contract. The allegations of the petition are confined strictly to such a cause of action; nevertheless, we believe it is within the province of the court to award judgment as upon a quantum meruit. (*Clark* v. *United States*, 95 U. S. 539; *Wardell* v. *United States*, 103 U. S. 651; *Thomas* v. *Brownville, etc., R. R. Co.*, 109 U. S. 522.) Defendants practically concede this authority but contest the sufficiency of proof to sustain the value of the goods furnished. With this contention we agree. A careful examination of the whole record discloses a complete absence of any competent evidence upon which we might predicate such a judgment.

Having held that there was insufficient proof on which to base a judgment for a *quantum meruit*, the court, in the Government's opinion, erroneously separated the part of the transaction dealing with class

B satchels and allowed appellant company to recover as upon the contract for this class, when, because of fraud, the contract had been forfeited for all purposes.

B.

Because Revised Statutes, 1086, forfeits a fraudulent claim to the Government.

The Government's contract was for completed satchels, classes A and C of which required shoulder straps, so that the provision with reference to straps was not a separable term. It was not a divisible contract, as, for example, one for satchels with straps and another for satchels without straps.

The fraud that was perpetrated through the conspiracy and the appellant company-Lorenz contract entitled the Government to rescind the entire transaction and relieved it from paying for the satchels in its possession.

If the company was constructively implicated, and the findings and the court's opinion (Rec. p. 20) seem to support this theory, it thereby forfeited to the Government any claim for which it could have produced evidence to prove the value. Revised Statutes, page 199, chapter 21, section 1086 reads:

> SEC. 1086. Any person who corruptly practices or attempts to practice any fraud against the United States in the proof, statement, establishment, or allowance of any claim, or of any part of any claim against the United States, shall ipso facto forfeit the same to the Government; and it shall be the duty of the Court of Claims, in such cases, to find

specifically that such fraud was practiced or attempted to be practiced, and thereupon to give judgment that such claim is forfeited to the Government, and that the claimant be forever barred from prosecuting the same.

IV.

Assuming that appellant company did not have constructive knowledge and that the transaction was not illegal, nevertheless the company can not sue upon its contract with the Government because it did not perform the same on its part.

Appellant company failed to furnish straps for classes A and C. This default is obviously material since the straps were indispensable and the Government was forced to purchase substitutes to supply the deficiency. That it was substantial is clear from the contract. The company evidently realized this, for after its agent Crawford learned of the inability of Wiley & Co. to furnish the straps, and after Crawford assented to Machen's arrangement whereby the Government should furnish the straps, it entered into a second contract with Lorenz, whereby he was to furnish the straps and yet receive a smaller portion of the profits than was allowed him under his first contract. (Findings IX and XII, Rec. pp. 10–16.) Having failed either through its own efforts or through its agents, for whose default it is chargeable, the company's performance was only partial, regardless of whether or not it was a party to the strap fraud. Appellant company was unable to

prove a full performance of the contract which is essential to an action based upon it. The Government never consented to this, for whatever Machen did is immaterial since he was not authorized under the contract to alter it, and, furthermore, he was one of the members of the conspiracy. The court says (Rec. p. 20):

> The plaintiff's contract expressly obligated it to furnish the straps, and it was its affair to see that the contract was faithfully executed in all respects. The defendants can not be charged with a default in performance due to the remissions of a duly authorized agent of the plaintiff's acting within the scope of his employment. The loss must fall upon the company. Machen did communicate the fact that the Government was paying for satchel straps to Crawford. This was a communication to the company, for Crawford was its agent for this and other purposes, and the defendants had a right to treat it as a communication to the company. The Government was under no obligations to go further. The result, therefore, is that the plaintiff company did not perform its contract, but committed a breach thereof, which is not cured by its offer to make restitution after the fact.

Having failed to perform its obligations, the company is reduced to an action upon a *quantum meruit;* but, as we have shown, this failed for want of competent evidence and because of sec. 1086 R. S. (*supra*).

Wherefore appellee prays that this court render judgment directing the Court of Claims to reverse that part of its judgment in appellant company's favor and to dismiss the petition.

HUSTON THOMPSON,
Assistant Attorney General.

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